

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7801 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VRAJLAL GOKALDAS TANNA

Versus

MANAGING DIRECTOR

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR AS VAKIL for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/02/99

ORAL JUDGEMENT

Rule returnable today. Learned advocate Mr. A.S Vakil appears for and waives service of rule on behalf of respondent-herein.

2. The petitioner before this Court is a Bank Officer who has retired from service on 31st December,

1995. Before the petitioner attained the age of retirement, on 2nd September, 1995, he was suspended from service pending initiation of disciplinary proceedings and the result thereof. The said order of suspension continued to be in operation till the petitioner retired from service. It is an admitted fact that even after the petitioner's retirement till date no disciplinary action has been initiated against the petitioner. The petitioner claims that since the respondent-Bank has failed to initiate the disciplinary action against the petitioner, the said order of suspension should be treated to be non-est and petitioner should be paid difference of salary for the period of suspension and such salary shall be taken into consideration for computation of his retirement dues. The petitioner claims that inspite of his retirement three years ago, the petitioner has not been paid several amounts due and payable to the petitioner i.e., the pension, encashment of leave outstanding, gratuity, college fees for the education of his son, the officiating allowance, House Rent Allowance.

3. The petitioner's claim for House Rent Allowance, college fees and officiating allowance has been disputed. It is contended that at the relevant time the petitioner was entitled to a sum of Rs. 1261/= per month as House Rent Allowance and the same was paid to the petitioner. However, the petitioner's claim for higher allowance on the basis of the actual rent paid by him is not maintainable. It is also contended that under the relevant rules, the petitioner is not entitled to college fees and officiating allowance either. It is averred that petitioner has not furnished the details on which he has based his claim for officiating allowance. It is not disputed that the petitioner has been paid the admissible House Rent Allowance at the relevant time. Petitioner has not substantiated his claim for higher House Rent Allowance. The petitioner has also not substantiated his claim for college fees and the officiating allowance. In that view of the matter, the aforesaid claim for higher amount of House Rent Allowance, college fees and the officiating allowance is rejected.

4. The petitioner's claim for encashment of outstanding leave has also been disputed. It is averred that on the date of his retirement from service, the petitioner had enjoyed all the leave admissible to him and no leave was outstanding which the petitioner could have encashed. The said statement has not been disputed by the petitioner. The petitioner's claim for encashment of leave outstanding also requires to be rejected. It is

contended that the petitioner has been paid amount of gratuity as well as the amount of Provident Fund alongwith the contribution by the bank and the interest accrued thereon. The petitioner thus having availed of the benefit of contributory provident fund, he cannot claim pension as well. However, the Bank has assured that in the event the petitioner makes a representation in this regard and refunds the amount of Bank's contribution to Provident Fund alongwith interest accrued thereon plus the interest at the simple rate of 6% p.a. from the date of the payment of the said amount till the date of the refund, the Bank shall consider petitioner's the application for pension also. Therefore, in view of the aforesaid assurance given by the Bank, no further order is required to be made in respect of the claim for pension made by the petitioner. If the petitioner so wishes, he may apply to the Bank for pension and refund the amount of Bank's contribution to provident fund alongwith the interest accrued thereon and the additional simple interest @ 6% p.a. If the petitioner does so, the Bank shall decide the petitioner's application within a period of six weeks from the date of receipt of such an application and the refund of the aforesaid amount by the petitioner.

5. The petitioner's grievance in respect of the period of suspension appears to be justified. Though the petitioner was suspended from service as far back as on 2nd September, 1995 and he was permitted to retire from service on 31st December, 1995, no action has been taken against the petitioner as yet nor the period of suspension has been regularised. In my view, the Bank has committed a gross delay in prosecuting the petitioner and in not regularising the period of suspension. The Bank has not explained the delay in initiating the disciplinary action against the petitioner. In view of the long delay in initiating such an action, even after the retirement of the petitioner, the suspension of the petitioner from service is not justified. The Bank shall, therefore, treat the period of suspension i.e., the period from 2nd September, 1995 till 31st December, 1995, the date on which the petitioner retired from service, as the period spent on duty. The Bank is, therefore, directed to issue necessary orders treating the period spent by the petitioner under suspension to be the period spent on duty. The Bank shall accordingly pay difference of salary to the petitioner within a period of six weeks from today. Pursuant to the order that may be made by the Bank, the amount of gratuity due and payable be revised within a period of three weeks thereafter and the petitioner be paid the amount of difference of

gratuity. The aforesaid amount of difference of gratuity shall carry interest @ 12 per cent p.a. from the date the petitioner retired from service till the date of payment.

6. The petitioner has also expressed his grievance in respect of recovery of the amount of loan borrowed by the petitioner and outstanding on the date of his retirement. The petitioner has claimed that under the relevant scheme, the petitioner was entitled to repay the said outstanding amount in equal monthly instalments till he reaches the age of 70 years. However, in case of the petitioner, the entire loan amount has been recovered by the Bank from the amount of Provident Fund due and payable to the petitioner. It appears that under the relevant scheme known as Individual Housing Scheme, the employee concerned is permitted to repay the amount of loan in equal monthly instalments after the retirement but before he attains the age of 70 years. The said right is circumscribed by the condition that in the event the employee intends to repay the amount of loan in equal monthly instalments after his retirement, he shall keep an amount equal to the outstanding loan amount on the date of retirement as security with the Bank. It is not disputed that the petitioner herein has not kept any amount by way of security with the Bank. In the circumstances, the Bank's action in recovering the entire outstanding amount from the amount of Contributory Provident Fund cannot be questioned.

7. Though the petitioner has claimed reimbursement of medical bills he has not furnished any details in respect of said outstanding claim. In that view of the matter, it would be desirable that the petitioner makes an application to the Bank for reimbursement of the medical bills alongwith necessary documentary evidence and if such an application is made, the petitioner shall be reimbursed the amount of medical bills in accordance with law.

8. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

Prakash*